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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/516,252	03/01/2000	Patrick G Sobalvarro	3654-2	3759
826	7590	12/06/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			GARG, YOGESH C	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/516,252

Applicant(s)

SOBALVARRO ET AL.

Examiner

Yogesh C. Garg

Art Unit

3625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

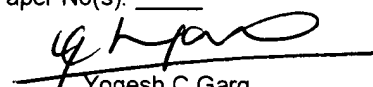
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


Yogesh C Garg
Primary Examiner
Art Unit: 3625

Continuation of 11. does NOT place the application in condition for allowance because:

(i) The revised affidavit/declaration filed on 10/14/2005 is insufficient to establish diligence from a date prior to the date of reduction to practice of the Travis Publication reference to either a constructive reduction to practice or an actual reduction to practice. The scope of the declaration or affidavit is not commensurate with the scope of the claim(s), that is defining an affinity space coordinate for each of a plurality of items available for sale, created package template including at least one mandatory element schema having an associated affinity space description, dynamically generating for sale by comparing, with a computer, the affinity space coordinate for each of the plurality of items with the affinity space description associated with the package templates and if the comparison step reveals a match presenting the dynamically generated package for sale, said package being defined at least in part by the package template and including at least one item with a matching affinity space coordinate.

The applicant, on page 2, in the third paragraph of the Declaration, has indicated that the package segment corresponds to affinity-space coordinate as exhibited on pages 20, 23, 25 and 31 of Exhibit A and pages 17 & 18 of Exhibit B but this fact is not supported by the applicant's disclosure. The applicant's specification filed on 3/1/2000 does not state or define categorically that the package segment are affinity space coordinates or vice-versa.

Also, the affidavit and the exhibits submitted does not show the following steps of:

defining an affinity space coordinate' and

dynamically generating for sale by comparing with a computer the affinity space coordinates for each of the plurality of items with the affinity space description associated with the package templates and if the comparison reveals a match presenting the dynamically generated package for sale.

(ii) The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Travis reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). In this case, the scope of the declaration or affidavit is not commensurate with the scope of the claim(s), that is defining an affinity space coordinate for each of a plurality of items available for sale, created package template including at least one mandatory element schema having an associated affinity space description, dynamically generating for sale by comparing, with a computer, the affinity space coordinate for each of the plurality of items with the affinity space description associated with the package templates and if the comparison step reveals a match presenting the dynamically generated package for sale, said package being defined at least in part by the package template and including at least one item with a matching affinity space coordinate.

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(iii) The 37 CFR 1.131 affidavit or declaration must contain an allegation that the acts relied upon to establish the date prior to the reference or activity were carried out in this country or in a NAFTA country or WTO member country. See 35 U.S.C. 104.